

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)

[jperry@orrick.com](mailto:jperry@orrick.com)

MELINDA S. RIECHERT (SBN 65504)

[mrieichert@orrick.com](mailto:mrieichert@orrick.com)

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road

Menlo Park, CA 94025-1015

Telephone: +1 650 614 7400

Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)

[kmantoan@orrick.com](mailto:kmantoan@orrick.com)

ORRICK, HERRINGTON & SUTCLIFFE LLP

The Orrick Building

405 Howard Street

San Francisco, CA 94105-2669

Telephone: +1 415 773 5700

Facsimile: +1 415 773 5759

Attorneys for Defendant

Apple Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S REPLY IN  
SUPPORT OF REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO DISMISS PLAINTIFF'S  
THIRD AMENDED COMPLAINT**

**[F.R.E. 201]**

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: May 16, 2024  
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)  
2 [kjuvinall@orrick.com](mailto:kjuvinall@orrick.com)  
3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
4 631 Wilshire Blvd., Suite 2-C  
5 Santa Monica, CA 90401  
6 Telephone: +1 310 633 2800  
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)  
9 [rbooms@orrick.com](mailto:rbooms@orrick.com)  
10 ORRICK, HERRINGTON & SUTCLIFFE LLP  
11 2100 Pennsylvania Avenue NW  
12 Washington, D.C. 20037  
13 Telephone: +1 202 339 8400  
14 Facsimile: +1 202 339 8500

15 Attorneys for Defendant  
16 Apple Inc.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Apple's Request for Judicial Notice (Dkt. 50; the "RJN") is a straightforward request that  
 2 the Court consider, in connection with Apple's Motion to Dismiss (Dkt. 48), two documents that  
 3 are directly referenced and thus relied upon in Plaintiff's Third Amended Complaint (Dkt. 47;  
 4 "TAC"). Nothing in Plaintiff's twelve-page opposition requires any contrary outcome.<sup>1</sup>

5 Exhibit A to the RJN is Plaintiff's own SEC Submission, which she previously submitted  
 6 to this Court in connection with a separate Motion for Judicial Notice that she filed. *See* Dkt. 35 at  
 7 ¶¶12-13 (describing Exhibit 6 as containing "Gjovik's SEC whistleblower tip filed on August 31  
 8 2021" and arguing that judicial notice was proper "for the purpose of determining what statements  
 9 the document[ ] contain[s]"); Dkt. 35-7 at pp. 3-21 (Exhibit 6, the SEC Submission). Exhibit B is  
 10 Plaintiff's Offer Letter governing her employment at Apple, which she signed and references the  
 11 TAC. *Compare* TAC ¶13 (alleging Plaintiff worked for Apple beginning on Feb. 23, 2015), ¶234  
 12 (alleging existence of "signed, written contract" that began her "employment relationship" with  
 13 Apple) *with* RJN, Ex. B (Offer Letter with Feb. 23, 2015 start date). The TAC references Exhibits  
 14 A and B and the contents thereof, and necessarily relies on these documents (by virtue of basing  
 15 certain allegations on them). *See, e.g.*, TAC ¶169 (referencing SEC Submission; "Gjovik filed an  
 16 SEC whistleblower tip on August 31, 2021 ..."); ¶234 (referencing Offer Letter; "Gjovik and Apple  
 17 entered into an employment relationship in 2015 with a signed, written contract."). Apple's request  
 18 for judicial notice is in line with well-established case law whereby courts take judicial notice of  
 19 such documents in evaluating the sufficiency of the pleadings on a motion to dismiss. *See, e.g.*,  
 20 *Juster v. Workday, Inc.*, 2022 WL 3030530, at \*1 n.1 (N.D. Cal. Aug. 1, 2022) (offer letter); *Ansell*  
 21 *v. Laikin*, 2011 WL 3274019, at \*3 (C.D. Cal. Aug. 1, 2011) (SEC complaint); *accord In re Google*  
 22 *Assistant Priv. Litig.*, 457 F. Supp. 3d 797, 813-14 (N.D. Cal. 2020) (judicial notice of contract  
 23 underlying breach of contract claims appropriate).

24 <sup>1</sup> The morning of April 16, Plaintiff filed three "declarations in opposition" to Apple's pending  
 25 Motion to Dismiss, Motion to Strike, and Request for Judicial Notice. *See* Dkts. 55, 56, 57. The  
 26 Court should not consider these untimely, improper filings in connection with the present matters.  
 27 *See Phigenix, Inc. v. Genentech Inc.*, 2019 WL 2579260, at \*6 n.5-6 (N.D. Cal. June 24, 2019)  
 28 (declining to consider "additional, untimely declaration in opposition" filed by *pro se* party "on  
 the day of [the] reply deadline"); *Warrick v. Birdsell*, 278 B.R. 182, 187 (9th Cir. Bankr. 2002)  
 (*pro se* litigant not excused from requirement to understand and follow bankruptcy court rules,  
 particularly in light of fact that she held law degree and also ran paralegal firm); *Al-Ahmed v.*  
*Twitter, Inc.*, 603 F. Supp. 3d 857, 871 (N.D. Cal. 2022).

Plaintiff's arguments against judicial notice are unavailing. Contrary to Plaintiff's suggestion, there is no requirement that a party meet and confer before the routine act of requesting judicial notice in connection with a motion. *See* Opp. to RJN ¶5. Plaintiff next argues that Apple failed to provide what she deems adequate proof of the authenticity of documents she signed (including one she has previously offered to this Court (*see id.* ¶14) but provides no actual reason to contest their authenticity—nor could she, given that she alleged the existence of each in the TAC and was the author or signatory of each. *See* Fed. R. Evid. 201(b)(2) (emphasis added) (judicial notice proper where accuracy “cannot *reasonably* be questioned”). Finally, and contrary to Plaintiff's opposition, Apple appropriately requested that the Court take notice of the content of Plaintiff's own SEC Submission and the Offer Letter she signed, rather than accepting Plaintiff's attempt to characterize these documents in the TAC without attaching them. *Contrast* Opp. to RJN ¶¶22-28 with *Moledina v. Marriott Int'l, Inc.*, 635 F. Supp. 3d 941, 946 (C.D. Cal. 2022) (citing *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977)) (“[T]he court may not assume the truth of allegations contradicted by ... matters properly subject to judicial notice”).<sup>2</sup>

The documents for which Apple seeks judicial notice are ones whose authenticity Plaintiff cannot reasonably contest, and which Plaintiff chose to reference in the operative complaint. They are relevant to assessing whether her allegations (including allegations contained in the documents she references in the TAC) state a claim. *See, e.g.*, Dkt. 48 at 11, 13 (content of SEC complaint relevant to whether TAC alleges “protected activity” within the meaning of SOX or Dodd-Frank), 23 (content of “written, signed contract” Plaintiff alleges governed her employment relationship relevant to whether TAC states a claim for breach of contract or derivative claims).

///

///

---

<sup>2</sup> Alternatively, even if one or more of the prerequisites of judicial notice were not satisfied (as Plaintiff argues), such documents could properly be considered in connection with Apple's Motion to Dismiss under the related doctrine of incorporation by reference. *See, e.g., Juster*, 2022 WL 3030530, at \*1 n.1 (quoting *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (noting that the “incorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself[;] [t]he doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken – or doom – their claims”).

1 For the foregoing reasons, Apple respectfully requests that the Court take judicial notice of  
2 Exhibits A and B.

3  
4 Dated: April 16, 2024

By: /s/ Jessica R. Perry  
JESSICA R. PERRY  
Attorneys for Defendant Apple Inc.